

# On Law, Power and Society: A View of a Moral Dialectic<sup>1</sup>

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‘...a primary social order undergoes, on the one hand, an externalization and institutionalization process whereby the law merges as an explicit ordering system, while at the same time a parallel process of internalization and spiritualization occurs, the result of which is called morality. Consequently then, law and morality must be regarded as conceptual opposites which in the course of linear development draw further and further apart. Morality is founded on internal obligation, law on external. Morality is what I feel obligated to do; law is what the state obligates me to do.’ (Geiger 1969: 117 - 118)

This occasion seems to invite a reconsideration of what Theodor Geiger (1891 - 1952) wrote as a response to the very vivid ‘realist movement’ in law and philosophy which he experienced in Scandinavia at the time of his arrival and the preceding years of his stay.<sup>2</sup> The bifurcation of traditional moral life into, on the one hand, a militant scientism in the legal and subsequent social sciences (to be formed), and, on the other hand, a forceful featuring of the inner and often chaotic emotional life of modern men and women as depicted in drama and in art actually seem to characterize the Scandinavian mentalities evolving in the late 19<sup>th</sup> and 20<sup>th</sup> century (Geiger 1946). In such a way, the featuring of Scandinavian moral life fits the scheme which Alasdair Macintyre proposes in his bestseller *After Virtue, A Study in Moral Theory* (1981). The making of the modern welfare state in Scandinavia demanded the externalization of the legal language from its traditional anchorage in moral values and the subsequent internalization/subjectivation of the value-language found in great Scandinavian literature. Although often lamented as

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1 A first version of this text was presented at meeting of the International Sociological Association in Montreal in 1998, and subsequently developed in various lectures and talks.

2 Theodor Geiger came to Denmark as a political refugee in 1933, and when Denmark was occupied he stayed in Sweden for a few years. After the war he held the first chair of sociology at Aarhus University. Despite a considerable intellectual output during his exile, he cannot be said to have exerted too strong of an influence in the shaping of Danish sociology. But his influence must be assessed more indirectly, as he was one of the founders of *Acta Sociologica, The Journal of the Nordic Sociological Association*.

a breach of moral life itself, the proposal here – stimulated by Geiger’s early reflections - is to view the bifurcation process between law and morality as a most powerful release of legal knowledge in situating social and political life anew. No longer intrinsically bound by traditional values (customs), law can now enter a combinational reservoir with different moral values, and thus preserve its sovereign power in ruling social life. The purpose of the present text is to outline a series of differentiating stages in the evolution of ‘legal knowledge’ capable of transgressing different political and moral value-regimes, thus strengthening the (invisible) power of law. Clearly, the text can be read as a treatise in the wider sociology of knowledge, but its ultimate purpose is lay bare the efficiency of law as an outcome of modernity itself. Scandinavian legal history provides a rich and not yet exhausted source of how successful processes of differentiation between law and morality emerge, and how they combine to strengthen the power of law.

*Externalization of law: step I (legal positivism)*

The passionate and tormented inner life of man, so brilliantly depicted by great Scandinavian play-writers, authors, and artists (Ibsen, Strindberg, Brandes, Pontoppidan) has its dialectic counterpart in the efforts to externalize the language of law around the turn of the previous century and the decades that followed. Moral life becomes bifurcated into an internal cultural life-sphere, and an external legal-political realm in control of power and social interests.

Hans Kelsen (1881-1973) must be regarded as one of the best-known and respected legal and scholars of the last century, both in Europe and in United States. In Denmark as in all Scandinavian countries, his influence was especially strong, not least among political scientists. His classic work, *Reine Rechtslehre*, was early translated into Swedish (*Statsvetenskaplig Tidskrift* 1933). The famous Danish jurist and political scholar, Alf Ross (1898-1989) was an early student of Kelsen. Given the release of passions and interests depicted in art and play-write, it is important to seek to understand the appeal of Kelsen’s normative-descriptive approach to law, and its dissociation from morality.

As a scientific programme separated from law as practice, as jurisprudence, the (normative) study of law focuses on ‘statements’ and ‘concepts’ of law. Just as in the case of logical positivism within the philosophy of science and its concern with ‘protocol statements’, the primary concerns of the legal scholar in Kelsen’s program are the analyses of legal statements and concepts. Values are kept strictly outside the logical analyses of law. Binding together ‘the system of internally related legal rules’ (the system of law) which strictly speaking are factual statements of norms (of how we ought to act) is a final norm which merely ‘is’: the *Grundnorm* refers to a pure decision; it is a command of the Prince and/or the Parliament. Positive law in Kelsen’s sense relates thus in an intimate way to political power; power is at its base, while systemic logic supplies its legal-cognitive form. While sharing the logical spirit of previous natural law-theories, the primary rules of modern scientific law are commanded by pure power and not by pure reason as in previous natural law.

Basically, Max Weber had argued along the same legal-positive lines as did Hans Kelsen (Bertilsson 1996:180). Both of them distinguished a legal science

from that of a behavioural science of law (sociology of law). Modern law and modern sociology are two distinct and separate sciences, although they are generated from within the same cognitive complex: positive law.

The (modern) sociological conception of law (or morality for that matter) is as little tied to morality and value as is the legal-positivistic conception of law. Both sociology and law -as scientific programs -are professional in character and they aspire to scientific neutrality. They study the *external* forms of expression of legal enactments in the case of law or sets of behaviour in the case of sociology. A sociological conception of law, here deriving from positive law, deals with the *efficiency* of law; how far people actually obey legal rules.

The driving force of the positive law doctrine of Kelsen, and a reason for its appeal in mid-war Scandinavian soil, was to scientize law in two opposing, yet clearly corresponding directions: the normative-descriptive orientation typical of dogmatic law and the sociological-behavioural orientation typical of the social sciences. Previous natural law doctrines (and doctrines of communal social ethics) were thus split in two seemingly opposing, yet inherently related directions: a logical and a behavioural one.<sup>3</sup> Two different modern disciplines practiced in different scholarly faculties were the result of the positivization of modern law. The legal scholars perform the cognitive-logical analyses of the legal enactments of the Parliaments, while sociologists perform factual studies of how these enactments function in actual social life. Seen from that point of view, sociology in its modern positive form is as bound to the power of the Sovereign as is the legal scholar. The Sovereign can decide to change the factual parameters of social life by enacting new legislation, and the sociologists will have to 'follow order'.

Unfortunately, the understanding of the genesis of modern positive law in its separation of moral life has fallen into oblivion today both among legal scholars and sociologists. This is a pity, as the separation of law and morality gave birth to the modern (positive) conception of both law and sociology. The origin of Scandinavian sociology in its institutionalized post-war expression is found within the bureaucratized ethos of legal positivism (Macintyre 1981).

#### *Externalization of law: step II (legal realism)*

In slightly different versions, legal realism appeared more or less simultaneously at different places around the turn of the century. In USA it was expressed as the prognostic view of court behaviour: to the extent that court action assumed regularity, law was predictable (Horwitz 1992). This behavioural theory of law involved a serious rupture with previous normative approaches - including that of legal positivism. In Scandinavia, legal realism assumed a very different and initially more philosophic form (with heavy impact upon the social-sciences in the making). As the Commander-in-chief (the law-giver) was still central, the question was to investigate the mechanisms by which power was transmitted now as neutral rules and obeyed accordingly.

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3 Niklas Luhmann appears to borrow quite a few insights from the logical positivists, not the least the systemic feature of law. See *Ausdifferenzierung des Rechts* (1981).

Scandinavian legal realism is often interpreted as one coherent form of philosophy, but on closer inspection it exhibits several distinct theoretical forms (Bjarup 1978). But common to all realist expressions of law is an emotivist theory of morality.

The philosophically best grounded version was that of Axel Hägerström (1868 - 1939), one of Sweden's foremost philosophers of this century. As hinted to earlier, he assumed a very militant stance to idealism in science, law, and morality. The legal philosophy of his time (based on Kant's philosophy of obligation) was particularly good a target. Hägerström wanted to lay the foundation of a theory/philosophy of law along the line of the physical sciences. Legal events had to be placed in a time-space nexus like any other physical facts. Characteristic of Hägerström's philosophical effort was his shift towards linguistic pragmatism.

Hägerström's pragmatic efforts are best summed up in the following motto: '*Es muss sich doch etwas an den Wörtern denken lassen*' (Hägerström 1916; 1939/1966). The linguistic-pragmatic turn promised to be especially fruitful in the case of studying the force of legal and moral norms: norms and obligations are not grounded in a prior and external reality, but are virtual realities. The mere utterance of a command: *Thou shalt..* creates a sui generis reality. Words have an impact upon how we behave; they are in this sense regulatory, and some words when uttered, are more regulatory than are others. If one can understand the mechanism of regulation released when uttering commands, the magical power of law and morality, as Hägerström believed, can be better understood. By the same token, in demystifying the words that command behaviour, the world as such can be demystified and behaviours changed. The project of Axel Hägerström was at the time of its articulation aiming at no less than *Entzauberung der Welt*: an early and little understood form of deconstructivism. The power of law, as Hägerström understood it, resided almost exclusively in the diffuse (action-releasing) power of legal and moral terms.

Hägerström's radical programme anchored in a pragmatic understanding of the (regulative) use of language was taken up and further developed in the legal theory of Karl Olivecrona, a prominent professor of law at Lund University in the mid-20th century. His understanding of the legal system was that of a pragmatic-linguistic switchboard: the essence of law resided in the recurrent use of performatives spoken out by the judges. The Legislator in charge of the massive symbolic power residing in state-centered law (positive law) could - by virtue of his power of speech - manipulate the social order at large (Olivecrona 1939/1972). Among the legal realists in Scandinavia in the mid-war period Olivecrona was the one who were closest to the temper of the German legal scholar Carl Schmitt.

Another student of Hägerström, Vilhelm Lundstedt, professor of law at Stockholm University, promoted a much more functionalist view of modern law, in fact very similar to the one of Emile Durkheim in France (Lukes & Scull 1983). What legal (and moral) norms refer to no longer resides in a prior metaphysical reality (as the Will of the Legislator in the case of Legal Positivism), but in the actual behaviours that the norms ultimately create and sustain. Hence, Lundstedt became known for having initiated a teleological interpretation of law and legal norms: law is the sum total of its behavioural results.

One of Denmark's foremost legal and political scholar in this century, Alf Ross, is not really known among sociologists, but his influence on the moral and political climate of post-war Denmark (and for that matter Scandinavia) was extensive. As a young scholar he was a disciple of Hans Kelsen in Vienna, but for one reason or the other his famous *Habilitationsschrift, Theorie der Rechtsquellen* (1929) was rejected by Kelsen and instead presented as a doctoral thesis at Uppsala University under the ægis of Axel Hägerström. Like Kelsen, his legal philosophy is marked by normative descriptivism: it is possible to have a neutral understanding of ought-statements. Such norms (written in the law-text) can be looked upon from the outside, and their logical and behavioural characteristics can be assessed as were they empirical events; i.e. as facts in the world. Ross forwarded a systemic view of law which comprised at one and the same time the normative-descriptive and the factual side of law, the internal view is combined with the external view (Ross 1953). In such a way, Ross maintains the legal positivist heritage of a duality: *Faktizität und Geltung*, alluding to Habermas more recent treatise (1992). The validity of law carries a double burden: cognitive justification and behavioural efficiency; knowledge and power.

In order to illustrate the potency of realist theory of law as far as the notion of right is concerned, I shall briefly relate to a wellknown essay *T'u'-T'u'* by Alf Ross (1951:468-484). Also Ross, as had Durkheim earlier, wanted to reveal the magic operator constituting legal (and moral) commands, enhanced even with the logical analysis of such commands. Legal propositions, and especially those which prohibit or allow privileges in the form of freedoms or rights have, Ross suggests, the same logical structure as is found in the *T'u'-T'u'*-rites of the Noit-kif-people described by Negni. If, for example, a Noitkifonian man meets his mother-in-law, or if a totem animal has been killed, or if the food prepared for the kin has been eaten by somebody else, then *t'u'-t'u'* occurs among the people. Those who have committed those crimes are afflicted by *t'u'-t'u'*, i.e. marked by evil forces. As Ross says, it is very difficult to explain exactly what is meant by *t'u'-t'u'*, since it has no concrete reference apart from the fact that it has very practical consequences; the criminal is possessed and has to be subjected to a purgatory act. As we know from the sociologist W.W. Thomas, when a situation is defined as real, it is real in its (behavioural) consequences.

The primitive magic *t'u'-t'u'* becomes clearer when it is seen in analogy to the concept of subjective rights in legal discourse. The logical structure of legal propositions could very well fit also the magical rites of the *t'u'-t'u'*:

- 1) When an individual has consumed the food prepared for the king, then he is *t'u'-t'u'*.
- 2) When a person is *t'u'-t'u'*, then he ought to be subjected to purgatory acts = 1 + 2:
- 3) When a person has consumed the food prepared for the king, then he ought to be subjected to purgatory acts.

We have to compare the performative function of the *t'u'-t'u'* with the modern legal concept of right such as it functions in the structure of legal propositions;

- 1) When x has legally purchased some object, then x is granted property-rights to that object.
- 2) When x has property-rights to an object, then x has the power to vindicate such rights.
- 3) When x has legally purchased an object, then x has the power to vindicate such rights.

The analogy between the magic of the *t`u'-t`u'* concept and modern legal concepts, such as rights, duties, and obligations, lies in the fact that they both perform a very important technical transition between the two kinds of statements in a legal propositions. As technical devices, such magic concepts perform a transitory link between a legal statement (with truth-value) and a legal command (a call to action). As does the term *t`u'-t`u'*, the legal concept of right links a semantical and a pragmatic property, if x, then y. The legal concept of right, as Ross argues, carries no independent meaning apart from its transitory function in a legal proposition. The same logic applies to the *t`u'-t`u'*-concept. In conjunction with some factual statement - a man has met his mother of law - *t`u'-t`u'* acts as an *operating* device for the eliciting of various behavioural effects such as he should be purged. The legal concept of right has, says Ross (and the legal realists in general) carries no other meaning than a pragmatic-technical one: it becomes a call to action if, when certain conditions are present.

Ross' chilly analysis may appal (and certainly did at the time of its articulation) the advocates of various natural law theories of rights who assume that the legal (and moral) language guarantee rights existing prior to and independent of promulgated law. At this juncture it is pertinent to recall Weber's legal-bureaucratic theory of authority, concentrating power in the system of legal imperatives inherent in the modern state. In the last analysis, the legal-bureaucratic organization creates rights by means of abstract decrees. It could in fact be suggested that Ross supplements Weber's theory in this respect by expressing its inherent magic: the concept of right belongs no longer to particular persons but is a function of the operation of legal language. Outside that legal-bureaucratic framework, Ross says, the concept of right is void of meaning: i.e. it carries no truth-value. From such a point of view, legal right-talks are efficiently severed from the more diffuse moral version.

So what the legal realists achieved in Scandinavia was to free the legal language from any remaining moral sentiments: law and morality could then relate quite freely to one another as there were no longer any binding internal relation. This is not to suggest that the legal realists were unconcerned with the value-question, on the contrary, they were all, in different degrees, intensively political. But stimulated by Hans Kelsen's theory of pure law (although the legal realists criticised such a conception of a prior will), they put heavy thrust in the power of law to revolutionize social life from above. And law, in their view, was after all the reflection of organized state-power. Weary of the heavy value/morality complex of socialist policies and the tendencies of socialism (and certainly marxism) to resort to a some form of natural-law argument, the legal realists turned to the majestic

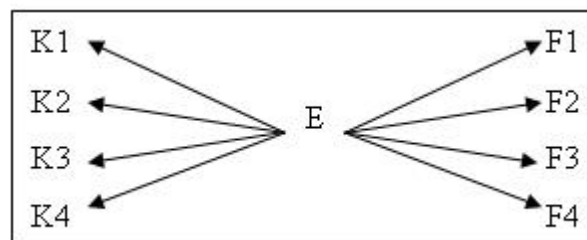
power of law rather than the working class to revolutionize social life from above. In their view, purified law had revolutionary force.

*Independent legal imperatives and artichoke socialism*

The realist conception of rights actually stimulated what has been referred to as ‘artichoke-socialism’ (Abrahamsson and Broström 1982). The Social Democratic Parties all over Scandinavia in the 20s and 30s were much impressed by such ideas. If, for example, various property- and inheritance-rights could be analysed according to the following artichoke scheme (functional socialism), then certain political actions (in the form of new legislations) could gradually pluck the flower of the plant, thus making the concept of property void of magical content:

The artichoke

Property-rights



We can interpret the  $\text{t}^{\text{u}}\text{-t}^{\text{u}}$  magical operator spelled out in the practical-legal operation of property-rights as E. E is the power given to a person as a result of its being said that she is granted property-rights to something. Such rights are the effect of there being other kinds of legislations, as for instance, the law of purposive contracts (buying and selling), the law of gifts, or the law of inheritance, and so on (K1, K2, K3, K4..)E gives rise to certain powers on behalf of the owner, she can sell her property, give it away, write a testament, or otherwise do what she wants assuming that her actions do no hurt other persons (F1, F2, F3, F4). Property-rights from such a viewpoint stand for a set of legally guaranteed powers. Yet, if artichoke socialism was to work (as it certainly did in the case of some African post-colonial countries stimulated by legal socialism), then the power-plant could gradually be plucked of its magic beauty. If there were no longer any legal powers attached to property, its social function by the same token was void of value.

I would not here dare to say whether the extensive legislation of the Nordic welfare states is indebted to the idea of artichoke socialism. But perhaps one could surmise that with the idea (and factual force!) of an independent legal order, functioning as an actual and strong agent of social change in reforming traditional societies, the power of legal imperatives in changing social life cannot be underestimated in Nordic countries. It is a pity that there exist no in-depth sociological study of how the power of law has been enacted in the Nordic countries as a key mechanism of social change.

*Externalization of law: step 3 – the social field*

Despite their degree of purification enabling logical abstractness and formal ‘beauty’, legal theories as those surveyed above also suffer from an inherent deficiency – they are abstracted from the social field in which they function and from which they achieve and execute power. The legal realists discovered the power of law to reside in the language issuing commands. However, the power of language is enacted in an already established social field of more or less diffuse power. As the classic social-democratic intellectuals admitted, jurists are typically forming ‘le noblesse d’etat’; and unless their diffuse power, derived from tradition and social class selection, is broken, no real prospect in instantiating radical social change is possible!<sup>4</sup>

All since Alexis de Toqueville’s journey to America in the 1830<sup>th</sup>, the relation between the legal profession and modern state power has been the subject of debate (Toqueville 1946:182 - 214). Is the power of legal imperatives, in the last instance, dependent on the hidden dynamic of the social field of power and as such difficult to control? Modern state power (the law-state) is concomitant with the power of the jurists to proclaim and enact its rules. Modern democracy necessitates bureaucratic organizations with rigid rule-following in order to implement its plebiscitary power; jurists become the constitutive handy-men of modernity. Their power penetrates all social realms where bureaucracies intervene: jurists are supremely in command of enacting impersonal rules. And as Max Weber has shown, modernity in the form of increasing rationalization and impersonalization is intrinsically linked to the power of law (Weber 1968: II).

A problem with the ‘social power of law’ as distinct to the two previous levels of law is its resilience to political intervention. Kelsen’s model of pure law invites any political party-constellation into ceasing formal (state) power; the realist model locates law’s power as residing in the power of linguistic enactments and performances; while the ‘social model of law’ reminds technical state-law of its own supreme law-source: society. From the point of view of the latter, the legal system also emerges as a social system of domination and control ‘outside law’. Axel Hägerström did indeed address the same complex in his famous essay on the origin of valid law (GRU, ‘Är gällande rätt uttryck av vilja,’ 1916). ‘Valid law’, Hägerström says, cannot be derived from ‘the will of the state’ (statsviljan) as the latter construction would imply that the state is prior to law, i.e. is law-less. All attempts to bind the will of the state as the result of a social contract (Hobbes, Locke and Rousseau) will, in Hägerström’s view, end up in a vicious circle; the return of natural law and thus weaken the power of positive law at the very outset. It is at this juncture that Hägerström formulates his famous motto: *Es muss sich doch etwas an den Worten denken lassen* (1916). But from a social point of view, words are enacted in a communicative field the social dynamic of which furnishes words with their magic aura: The command ‘shut the window’ is so much more efficient when performed and enacted in a field of asymmetric relations. The

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4 Among such intellectuals were Arthur Engberg, minister of church and higher education, and Östen Undén minister of foreign affairs (Källström 1986).



‘social’, as a more or less mystical force intervenes with the ‘legal’; or the social expresses itself as law!

The implementation of positive, formal-technical, law demands the rise of a highly trained technical law profession. In the spirit of Max Weber, several sociological studies of the legal profession have shown that in the course of modernization, jurists (as a common term for various legal expertise) evolve first as ‘honoratores’ and later into ‘technicians’ (Weber 1968: 784 – 801, Aubert 1976, Bertilsson 1994, Hammerslev 2003). When modern institutions (banking, transportation, communication, education, health and social policies) were being established, in our part of the world typically in the late 19<sup>th</sup> and 20<sup>th</sup> centuries, jurists became a key profession; they were the ‘jack-of-all-trades’ in issuing the rules and conduct of modern discourse. However, in the course of further consolidation of modernity, expansion of the technical, medical and social realms, new (state) professions arise: engineers, doctors, social workers, planners, economists. These new professions will in turn control new ‘jurisdictions’, thus narrowing the boundaries of the jurists. As a result, jurists are loosening their previous diffuse status as ‘honoratores’; in line with other modern state profession, they become ‘technicians’ (neutral experts). As ‘honoratores’ jurists were still in possession of moral influence, while as ‘technicians’ their social role is made more precise; legality and morality are splitting further apart.

Questions have been raised as to whether in that process of ongoing differentiation and impersonalization, jurists are losing out on their social power of domination and esteem – or if their power merely is transformed technically and made more invisible; they are no longer the law-lords in the British Parliament, but merely the invisible and well-suited functionaries in today’s EU-bureaucracy?

Such questions are likely to stir engagement, and even irritation, among practicing jurists. In terms of plain numbers, the legal profession has not increased in the same (relative) extent as have the numbers of many other modern professions such as engineers, medical doctors, economists or social workers (Bertilsson 1994, Hammerslev 2003). But slow growth may also signify a transformation and diffusion of power: jurists withdraw from some areas, while at the same time they increase their symbolic presence at all central boards where major decision-making takes place! As is well-known from the sociological discussion on professions and their social power, a profession that exercises strict recruitment control, and hence slow growth, can under some conditions drastically increase their social power and dominance. The case of medical doctors is illustrative: many more doctors are needed to fill out various demands (not the least in the Nordic countries), but the profession’s strict control of recruitment also allow the profession to raise its salary and social status. The case of jurists is perhaps parallel: turning routine work over to other professions (social and technical workers), jurists themselves can concentrate on more strategic sites, thereby preserving social power and prestige as a sovereign state-profession..

*And with what consequences for moral life?*

As I started out this text with a quotation from Theodor Geiger reflecting on the fate of Scandinavian legal life in the wake of the rise of realism both in law and in art, I shall end this text with a note on moral values as well. Will the split of legality and

morality result in a law-state where only technical-bureaucratic norms have intrinsic value, and where morality in turn evolves into rampant nihilism, cynicism or else relativism? Critics of the modern state, and notably of the Nordic welfare-states, have warned against the rise of 'clientism' and passivity in the general population facilitating dictatorial rule (MacIntyre 1981, Woolfe 2001). The loss of morality residing in tradition and fellowship has been viewed to result in rootlessness and loneliness in men and women making them conducive to various market whims. In the sociological tradition such classics as David Riesman's *The Lonely Crowd* (1953) or Daniel Bell's *Cultural Contradictions of Capitalism* (1976) have been intellectual landmarks in critically framing the mental distress of modern society.

Although the Nordic countries (with the exception of Denmark!) often are targeted as beds of depression and gloominess, not the least spread by Ingmar Bergman's world popularity as film producer, it is currently notable that the populations in these countries are among the happiest in the world (Veenhoven 2006). In addition, these countries are also characterized as among the world lead in generating social trust: people trust one another and they trust the authorities not to rob their tax-money (Bertilsson & Hjorth-Andersen, forthcoming). Transparency index from World Economic Forum repeatedly places the Nordic countries as among the most transparent. Such trust and transparency translate into efficient business cultures with the consequent that the Nordic countries at the present also are among the richest countries in the world. Against all odds, both private and public morality in these 'law-states' (with extended legal rule) seem to thrive. The question is if the externality parameters of law sketched earlier is at all related to the happy moral outcomes that we presently can detect, or if the latter type of 'felicity conditions' are randomly occurring?

Clearly, there are no ways that these intricate relations can be sufficiently addressed in this text. The framing of moral values in all the Nordic countries has been heavily influenced by organized labour and the rise of social democratic state-power. The language of solidarity strengthened the labour unions and became one of the most efficient weapons in the social struggle of improving the lot of the mass of people. Solidarity also became the central moral vocabulary of the welfare state. Thus, rampant individualism never really took hold in our countries – unless in the pastoral form of being alone with nature. The intensification of moral life, as described by Geiger at the beginning of this text, can assume many different forms some of which are more or less 'social'. In the case of the Nordic countries, the suggestion is that moral life, both on the public and the private level, has been heavily molded and shaped by the language of equity and solidarity. When law is cleansed from substantive moral values (procedural values as legality are intrinsic to legal rule), political sovereignty can infuse such values from the outside, thus allowing for greater contingency in the rule of both polity and law. The resilience of the legal profession as a stabilizing social field then becomes a central bridge of transmission, thus allowing for 'the moral dialectic' that I sketched at the outset of this text. In the case of the Nordic countries, the moral dialectic has had a happy outcome, but there is no guarantee that this will be repeated elsewhere!

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